

1 HONORABLE THOMAS S. ZILLY
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 INTERNATIONAL BUSINESS MACHINES
11 CORPORATION,

12 Plaintiff,

13 v.

14 ZILLOW GROUP, INC.; ZILLOW, INC.,

15 Defendants.

16 NOS. 2:20-cv-00851-TSZ; 2:20-cv-01130-TSZ

17 AMENDED STIPULATED PROTECTIVE
18 ORDER

19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in Case Nos. 2:20-cv-00851-TSZ and 2:20-cv-01130-TSZ
21 (the/this “action” or the/this “litigation”) are likely to involve production of confidential, proprietary,
22 or private information for which special protection from public disclosure and from use for any
23 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
24 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
25 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
discovery and that the protection it affords from public disclosure and use extends only to the limited
information or items that are entitled to confidential treatment under the applicable legal principles.
The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective

1 Order does not entitle them to file confidential information under seal; Civil Local Rule 5(g) sets
 2 forth the procedures that must be followed and the standards that will be applied when a party seeks
 3 permission from the court to file material under seal.

4 2. **DEFINITIONS**

5 2.1 **Challenging Party:** a Party or Non-Party that challenges the designation of
 6 information or items under this Order.

7 2.2 **“CONFIDENTIAL” Information or Items:** information (regardless of how it is
 8 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
 9 Civil Procedure 26(c).

10 2.3 **Counsel (without qualifier):** Outside Counsel of Record and House Counsel (as well
 11 as their support staff).

12 2.4 **Designated House Counsel:** House Counsel who seek access to “HIGHLY
 13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

14 2.5 **Designating Party:** a Party or Non-Party that designates information or items that it
 15 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
 16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
 17 COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

18 2.6 **Disclosure or Discovery Material:** all items or information, regardless of the medium
 19 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
 20 transcripts, and tangible things), that are produced or generated in disclosures or responses to
 discovery in this matter.

21 2.7 **Expert:** a person with specialized knowledge or experience in a matter pertinent to
 22 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
 23 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,
 24 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s
 25 competitor.

1 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
 2 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or
 3 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive
 4 means.

5 2.9 "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY" Information
 6 or Items: extremely sensitive third-party financial or technical information whose disclosure is
 7 restricted by a protective order entered by another court, and disclosure of which to a Party or Non-
 8 Party would create a substantial risk of serious harm that could not be avoided by less restrictive
 9 means. Designation of material as "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES
 10 ONLY" requires advance consent of the Receiving Party, and material so designated may not be
 11 viewed by House Counsel, and shall be subject to the procedures for challenging designations set
 12 forth in Section 6 of this Stipulated Protective Order.

13 2.10 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely
 14 sensitive "Confidential Information or Items" representing computer code and associated comments
 15 and revision histories, formulas, engineering specifications, or schematics that define or otherwise
 16 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to
 17 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided
 18 by less restrictive means.

19 2.11 House Counsel: attorneys who are employees of a party to this action. House Counsel
 20 does not include Outside Counsel of Record or any other outside counsel.

21 2.12 Non-Party: any natural person, partnership, corporation, association, or other legal
 22 entity not named as a Party to this action.

23 2.13 Outside Counsel of Record: attorneys who are not employees of a party to this action
 24 but are retained to represent or advise a party to this action and have appeared in this action on behalf
 25 of that party or are affiliated with a law firm which has appeared on behalf of that party.

26 2.14 Party: any party to this action, including all of its officers, directors, employees to

1 whom disclosure is reasonably necessary to the litigation, consultants, retained experts, and Outside
 2 Counsel of Record (and their support staffs).

3 2.15 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 4 Material in this action.

5 2.16 Professional Vendors: persons or entities that provide litigation support services (e.g.,
 6 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
 7 storing, or retrieving data in any form or medium) and their employees and subcontractors.

8 2.17 Protected Material: any Disclosure or Discovery Material that is designated as
 9 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as
 10 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or as “HIGHLY
 11 CONFIDENTIAL – SOURCE CODE.”

12 2.18 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 13 Producing Party.

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only Protected Material
 16 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
 17 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
 18 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
 19 However, the protections conferred by this Stipulation and Order do not cover the following
 20 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
 21 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
 22 publication not involving a violation of this Order, including becoming part of the public record
 23 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
 24 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
 25 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
 Protected Material at trial shall be governed by a separate agreement or order. Nothing in this

1 Protective Order shall prevent or restrict a Producing Party's own disclosure or use of its own
 2 Discovery Material for any purpose; and nothing in this Order shall preclude any Receiving Party
 3 from showing Discovery Material to an individual who prepared the Discovery Material.

4 Except as may be otherwise ordered by the Court, any person may be examined as a witness
 5 at depositions and/or trial and may testify concerning all Protected Material of which such person
 6 has prior knowledge as set forth below:

7 (i) A present director, officer, and/or employee of a Producing Party may be examined
 8 and may testify concerning all Protected Material which has been produced by that Party;

9 (ii) A former director, officer, and/or employee of a Producing Party may be examined
 10 and may testify concerning all Protected Material of the Producing Party that establishes on its face
 11 or is established from other documents or testimony to have been previously received from or
 12 communicated to that person and of which he or she has prior knowledge, including any Protected
 13 Material that refers to matters of which the witness has personal knowledge, has been produced by
 14 that Party, and pertains to the period or periods of his or her employment; and

15 (iii) Non-parties may be examined or testify concerning any document containing
 16 Protected Material of a Producing Party that appears, on its face or from other documents or
 17 testimony, to have been previously received from or communicated to the non-party as a result of
 18 any contact or relationship with the Producing Party or a representative of such Producing Party.
 19 Any person other than the witness, his or her attorney(s), and any person qualified to receive
 20 Protected Material under this Order shall be excluded from the portion of the examination concerning
 21 such information, unless the Producing Party consents to persons other than qualified recipients
 22 being present at the examination.

23 4. **DURATION**

24 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 25 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and

1 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
 2 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
 3 time limits for filing any motions or applications for extension of time pursuant to applicable law.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 **5.1 Available Designations.**

6 Any Producing Party may designate Discovery Material with any of the following
 7 designations, provided that it meets the requirements for such designations as provided for herein:

- 8 (i) “CONFIDENTIAL”
- 9 (ii) “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
- 10 (iii) “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY”
- 11 (iv) “HIGHLY CONFIDENTIAL – SOURCE CODE.”

12 **5.2 Exercise of Restraint and Care in Designating Material for Protection.** Each Party or
 13 Non-Party that designates information or items for protection under this Order must take care to limit
 14 any such designation to specific material that qualifies under the appropriate standards. To the extent
 15 it is practical to do so, the Designating Party must designate for protection only those parts of
 16 material, documents, items, or oral or written communications that qualify – so that other portions
 17 of the material, documents, items, or communications for which protection is not warranted are not
 18 swept unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 20 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 21 encumber or retard the case development process or to impose unnecessary expenses and burdens
 22 on other parties) expose the Designating Party to sanctions.

23 If it comes to a Designating Party’s attention that information or items that it designated for
 24 protection do not qualify for protection at all or do not qualify for the level of protection initially
 25 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
 mistaken designation.

1 5.3 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
 2 e.g., second paragraph of section 5.3(a) below), or as otherwise stipulated or ordered, Disclosure or
 3 Discovery Material that qualifies for protection under this Order must be clearly so designated before
 4 the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents, but
 7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
 8 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 9 ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY
 10 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a
 11 portion or portions of the material on a page qualifies for protection, and to the extent it is practical
 12 to do so, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
 13 appropriate markings in the margins) and must specify, for each portion, the level of protection being
 14 asserted.

15 A Party or Non-Party that makes original documents or materials available for inspection
 16 need not designate them for protection until after the inspecting Party has indicated which material
 17 it would like copied and produced. During the inspection and before the designation, all of the
 18 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
 19 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
 20 copied and produced, the Producing Party must determine which documents, or portions thereof,
 21 qualify for protection under this Order. Then, before producing the specified documents, the
 22 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
 24 COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page
 25 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making

1 appropriate markings in the margins) and must specify, for each portion, the level of protection being
 2 asserted.

3 Moreover, media containing documents may be designated by marking the media with the
 4 appropriate confidentiality designation. If documents are printed from the media, they shall be
 5 immediately marked with the designation on the media.

6 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 7 Designating Party identify on the record, before the close of the deposition, hearing, or other
 8 proceeding, all protected testimony and specify the level of protection being asserted. When it is
 9 impractical to identify separately each portion of testimony that is entitled to protection and it
 10 appears that substantial portions of the testimony may qualify for protection, the Designating Party
 11 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
 12 to have up to 21 days to identify the specific portions of the testimony as to which protection is
 13 sought and to specify the level of protection being asserted. Only those portions of the testimony
 14 that are appropriately designated for protection within the 21 days shall be covered by the provisions
 15 of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition
 16 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated
 17 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

18 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
 19 other proceeding to include Protected Material so that the other parties can ensure that only
 20 authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound"
 21 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 22 shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
 23 – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES
 24 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE."

25 Transcripts containing Protected Material shall have an obvious legend on the title page that
 the transcript contains Protected Material, and the title page shall be followed by a list of all pages

(including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time, subject to any applicable Scheduling Order. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process

1 by providing written notice of each designation it is challenging and describing the basis for each
 2 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
 3 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
 4 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
 5 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
 6 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
 7 Party must explain the basis for its belief that the confidentiality designation was not proper and
 8 must give the Designating Party an opportunity to review the designated material, to reconsider the
 9 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 10 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
 11 has engaged in this meet and confer process first or establishes that the Designating Party is unwilling
 12 to participate in the meet and confer process in a timely manner.

13 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
 14 Local Rule 37 (and in compliance with Civil Local Rule 5(g), if applicable) within 21 days of the
 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
 15 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
 competent declaration affirming that the movant has complied with the meet and confer requirements
 16 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion
 including the required declaration within 21 days (or 14 days, if applicable) shall automatically
 17 waive the confidentiality designation for each challenged designation. In addition, the Challenging
 Party may file a motion challenging a confidentiality designation at any time if there is good cause
 18 for doing so, including a challenge to the designation of a deposition transcript or any portions
 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
 19 declaration affirming that the movant has complied with the meet and confer requirements imposed
 20 by the preceding paragraph.

1 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
 2 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
 3 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
 4 Designating Party has waived the confidentiality designation by failing to file a motion to retain
 5 confidentiality as described above, all parties shall continue to afford the material in question the
 6 level of protection to which it is entitled under the Producing Party's designation until the court rules
 7 on the challenge.

8 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 10 produced by another Party or by a Non-Party in connection with this litigation only for prosecuting,
 11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 12 the categories of persons and under the conditions described in this Order. When the litigation has
 13 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
 14 DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a location and in
 16 a password-protected form that ensures that access is limited to the persons authorized under this
 17 Order.

18 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 20 information or item designated “CONFIDENTIAL” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
 22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 23 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
 24 Bound” that is attached hereto as Exhibit A;

25 (b) the officers, directors, and employees (including House Counsel) of the Receiving
 26 Party to whom disclosure is reasonably necessary for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
3 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
4 to Be Bound” (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff, professional jury or trial consultants, and
7 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
8 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
10 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
11 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
13 bound by the court reporter and may not be disclosed to anyone except as permitted under this
14 Stipulated Protective Order;

15 (g) the author or recipient of a document containing the information or a custodian or
16 other person who otherwise possessed or knew the information.

17 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
18 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY
19 CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the court
20 or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
21 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
22 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL –
23 SOURCE CODE” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
information for this litigation and who have signed the “Acknowledgment and Agreement to Be

1 Bound" that is attached hereto as Exhibit A;

2 (b) In the case of information or items designated as "HIGHLY CONFIDENTIAL –
3 ATTORNEYS' EYES ONLY," Designated House Counsel of the Receiving Party (1) who has no
4 involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for
5 this litigation, (3) who has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
6 and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

7 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for
8 this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
9 A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

10 (d) the court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants, and
12 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

14 (f) the author or recipient of a document containing the information or a custodian or
15 other person who otherwise possessed or knew the information.

16 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY CONFIDENTIAL –
17 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES
18 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items to Designated
19 House Counsel or Experts.

20 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
21 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or
22 item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
23 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets
24 forth the full name of the Designated House Counsel and the city and state of his or her residence,
25 and (2) describes the Designated House Counsel's current and reasonably foreseeable future primary
job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may

1 become involved, in any competitive decision-making. Designated House Counsel who receives
 2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to this Order
 3 shall promptly disclose any changes in job duties or responsibilities that may affect Designated
 4 House Counsel’s involvement in any competitive decision-making process prior to final disposition
 5 of the litigation.

6 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
 7 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
 8 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 9 ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY
 10 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written
 11 request to the Designating Party that (1) identifies the general categories of “HIGHLY
 12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
 13 COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that
 14 the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the
 15 Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
 16 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity
 17 from whom the Expert has received compensation or funding for work in his or her areas of expertise
 18 or to whom the expert has provided professional services, including in connection with a litigation,
 19 at any time during the preceding five years,¹ and (6) identifies (by name and number of the case,
 20 filing date, and location of court) any litigation in connection with which the Expert has offered
 21 expert testimony, including through a declaration, report, or testimony at a deposition or trial, during
 22 the preceding five years.

23 (b) A Party that makes a request and provides the information specified in the

24 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
 25 party, then the Expert should provide whatever information the Expert believes can be disclosed
 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
 shall be available to meet and confer with the Designating Party regarding any such engagement.

preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 7 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 37 (and in compliance with Civil Local Rule 5(g), if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

8. PROSECUTION AND ACQUISITION BAR

(a) Absent written consent from the Producing Party, any individual who receives access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information (collectively “HIGHLY SENSITIVE INFORMATION”) shall not advise on, consult on, prepare, prosecute, supervise, or assist in the preparation or prosecution of

any patent application, specifications, claims, and/or responses to office actions, or otherwise affect the scope of claims in patents or patent applications relating to (1) user single-sign-on operations within a federated computer environment, (2) storing, delivering, and presenting applications along with targeted advertising in interactive services provided on a computer network, (3) storing and delivering data objects for presenting applications along with command functions in an interactive service provided on a computer network, (4) displaying objects in multiple layers organized in a layer order, (5) producing and/or storing a promotion list of promotion instances in an electronic medium for a promotion management campaign, (6) geo-spatial and list-based mapping systems with coordinated map and list elements, and/or (7) retrieving and comparing image data to generate a map based on that data, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”). This provision does not prohibit Plaintiff’s counsel of record or experts in this litigation from participating in or representing it in reexamination proceedings, Post-Grant Review proceedings, Inter Partes Review proceedings, or Covered Business Method Review proceedings involving any patent, including the patents-in-suit, provided they (1) do not rely upon or use, directly or indirectly, Defendant’s **HIGHLY SENSITIVE MATERIAL** in those proceedings and (2) do not advise on, consult on, prepare, draft, or edit any amendment to specifications or claims in those proceedings. Further, Plaintiff’s counsel of record or experts in this litigation may not reveal Defendant’s **HIGHLY SENSITIVE MATERIAL** to any reexamination, inter partes review, or covered business method review counsel or agent. These prohibitions are not intended to and shall not preclude counsel from participating in proceedings on behalf of a Party challenging the validity of any patent. Nothing in this paragraph shall apply to any individual permitted to receive any other Party’s Protected Material and who in compliance with the terms of this Protective Order obtains, receives, has access to, or otherwise learns, in whole or in part, any other Party’s **HIGHLY SENSITIVE MATERIAL**, if said **HIGHLY SENSITIVE MATERIAL** is only of financial nature

1 and not of a technical nature.

2 (b) In addition, any individual for or representing the parties who reviews and/or
 3 learns, in whole or in part, any technical “HIGHLY SENSITIVE INFORMATION” information
 4 under this Order shall not supervise/assist in the acquisition of patents or patent applications related
 5 to the subjects listed in Section 8(a) on behalf of any entity that said individual knows or has reason
 6 to know is asserting or plans to assert claims of patent infringement against the Producing Party.

7 (c) This Prosecution and Acquisition Bar shall begin when access to “HIGHLY
 8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
 9 COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is
 10 first received by the affected individual and shall end two (2) years after final termination of this
 11 action, including all appeals.

12 9. SOURCE CODE

13 (a) To the extent production of source code becomes necessary in this litigation,
 14 a Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE”
 15 if it comprises or includes confidential, proprietary or trade secret source code.

16 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
 17 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
 18 ATTORNEYS’ EYES ONLY” information, including the Prosecution and Acquisition Bar set forth
 19 in Section 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
 20 SOURCE CODE” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the
 21 exception of Designated House Counsel.

22 (c) Any source code produced in discovery shall be made available for
 23 inspection, in a format allowing it to be reasonably reviewed and searched, during normal business
 24 hours or at other mutually agreeable times, at an office of the Producing Party’s counsel or another
 25 mutually agreed upon location. The source code shall be made available for inspection on a secured
 computer in a secured room without Internet access or network access to other computers (“Source

1 Code Computer”), and the Receiving Party shall not copy, remove, or otherwise transfer any portion
 2 of the source code onto any recordable media or recordable device. The Producing Party may
 3 visually monitor the activities of the Receiving Party’s representatives during any source code
 4 review, but only to ensure that there is no unauthorized recording, copying, or transmission of the
 5 source code. The Receiving Party shall keep a paper log indicating the names of any individuals
 6 inspecting the source code and dates and times of inspection, and the names of any individuals to
 7 whom paper copies of portions of source code are provided.

8 (d) In light of the COVID-19 pandemic, in addition to the procedures detailed in
 9 Paragraph 9(c), at any time when interstate travel or access to business offices is restricted as a result
 10 of the pandemic, access to each Source Code Computer containing source code produced in
 11 discovery shall also be made available for inspection remotely through ConnectWise Control
 12 Remote Support Software (or another remote access platform that the parties may agree on) (“RA
 13 Platform”), in a format allowing it to be reasonably reviewed and searched. Access to the RA
 14 Platform shall be password protected and end-to-end encrypted, and the Receiving Party shall not
 15 copy, remove, or otherwise transfer any portion of the source code outside of the RA Platform.
 16 Access will require multi-factor authorization, with the producing party providing new credentials
 17 for access each day. The RA Platform shall be accessed only where it cannot be viewed by any
 18 individual who is not authorized to access source code under the Protective Order. The Producing
 19 Party may electronically monitor the activities of the Receiving Party’s representatives during any
 20 source code review, but only to ensure that there is no unauthorized recording, copying, or
 21 transmission of the source code. The Receiving Party shall keep a log indicating the names of any
 22 individuals inspecting the source code and dates and times of inspection, and the names of any
 23 individuals to whom paper copies of portions of source code are provided. All printing of any
 24 excerpts of source code will be done by the producing party according to the procedures described
 25 in paragraph 9(e).

 (e) The Receiving Party may request paper copies of limited portions of source

1 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
 2 other papers, or for deposition or trial, but shall not request paper copies for the purposes of
 3 reviewing the source code other than electronically as set forth in paragraph (c) in the first instance.
 4 The Producing Party shall provide all such source code in paper form including bates numbers and
 5 the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party may challenge the
 6 amount of source code requested in hard copy form pursuant to the dispute resolution procedure and
 7 timeframes set forth in Paragraph 6 whereby the Producing Party is the "Challenging Party" and the
 8 Receiving Party is the "Designating Party" for purposes of dispute resolution.

9 (f) The Receiving Party shall maintain a record of any individual who has
 10 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
 11 maintain all paper copies of any printed portions of the source code in a secured, locked area. The
 12 Receiving Party shall not create any electronic or other images of the paper copies and shall not
 13 convert any of the information contained in the paper copies into any electronic format. The
 14 Receiving Party shall only make additional paper copies if such additional copies are (1) necessary
 15 to prepare court filings, pleadings, or other papers (including a testifying expert's expert report), (2)
 16 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies
 17 used during a deposition shall be retrieved by the Producing Party at the end of each day and must
 18 not be given to or left with a court reporter or any other unauthorized individual.

19 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 20 LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation that
 22 compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or
 23 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
 24 OUTSIDE COUNSEL'S EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" that
 25 Party must:

26 (a) promptly notify in writing the Designating Party. Such notification shall include

1 a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 3 the other litigation that some or all of the material covered by the subpoena or order is subject to this
 4 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 6 Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with the
 8 subpoena or court order shall not produce any information designated in this action as
 9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 10 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY
 11 CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena
 12 or order issued, unless the Party has obtained the Designating Party’s permission. The Designating
 13 Party shall bear the burden and expense of seeking protection in that court of its confidential material
 14 – and nothing in these provisions should be construed as authorizing or encouraging a Receiving
 15 Party in this action to disobey a lawful directive from another court.

16 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
 17 LITIGATION

18 (a) The terms of this Order are applicable to information produced by a Non-
 19 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 20 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES
 21 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-
 22 Parties in connection with this litigation is protected by the remedies and relief provided by this
 23 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
 24 additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to produce
 a Non-Party’s confidential information in its possession, and the Party is subject to an agreement

1 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

- 2 1. promptly notify in writing the Requesting Party and the Non-Party that some
3 or all of the information requested is subject to a confidentiality agreement with a Non-Party;
4 2. promptly provide the Non-Party with a copy of the Stipulated Protective
5 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the
6 information requested; and
7 3. make the information requested available for inspection by the Non-Party.

8 (c) If the Non-Party fails to object or seek a protective order from this court
9 within 14 days of receiving the notice and accompanying information, the Receiving Party may
10 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
11 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
12 possession or control that is subject to the confidentiality agreement with the Non-Party before a
13 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden
14 and expense of seeking protection in this court of its Protected Material.

15 12. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this Stipulated
18 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
19 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
20 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made
21 of all the terms of this Order, and (d) request such person or persons to execute the
22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

23 13. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
24 **MATERIAL**

25 If information is produced in discovery that is subject to a claim of privilege or of protection
as trial-preparation material, the party making the claim may notify any party that received the

1 information of the claim and the basis for it. After being notified, a party must promptly return or
 2 destroy the specified information and any copies it has and may not sequester, use or disclose the
 3 information until the claim is resolved. This provision is not intended to modify whatever procedure
 4 may be established in an e-discovery order that provides for production without prior privilege
 5 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
 6 agreement on the effect of disclosure of a communication or information covered by the attorney-
 7 client privilege or work product protection, the parties may incorporate their agreement in the
 8 stipulated protective order submitted to the court.

9 14. **MISCELLANEOUS**

10 14.1 **Right to Further Relief.** Nothing in this Order abridges the right of any person to seek
 its modification by the court in the future.

11 14.2 **Right to Assert Other Objections.** By stipulating to the entry of this Protective Order
 no Party waives any right it otherwise would have to object to disclosing or producing any
 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
 Party waives any right to object on any ground to use in evidence of any of the material covered by
 this Protective Order.

12 14.3 **Export Control.** Disclosure of Protected Material shall be subject to all applicable laws
 and regulations relating to the export of technical data contained in such Protected Material,
 including the release of such technical data to foreign persons or nationals in the United States or
 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
 data, and the Receiving Party shall take measures necessary to ensure compliance.

13 14.4 **Filing Protected Material.** A Party that seeks to file under seal any Protected Material
 must comply with Civil Local Rule 5(g). Protected Material may only be filed under seal pursuant
 to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil
 Local Rule 5(g), a sealing order will issue only upon a request establishing that the Protected
 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under

1 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local
2 Rule 5(g) is denied by the court, then the Receiving Party may file the Protected Material in the
3 public record unless otherwise instructed by the court.

4 15. **FINAL DISPOSITION**

5 Within 60 days after the final disposition of this action, as defined in paragraph 4,
6 each Receiving Party must return all Protected Material to the Producing Party or destroy such
7 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
8 compilations, summaries, and any other format reproducing or capturing any of the Protected
9 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit
10 a written certification to the Producing Party (and, if not the same person or entity, to the Designating
11 Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected
12 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any
13 copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the
14 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
15 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
16 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
17 and expert work product, even if such materials contain Protected Material. Any such archival copies
18 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
Section 4 (DURATION).

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
20

21 DATED: August 6, 2020

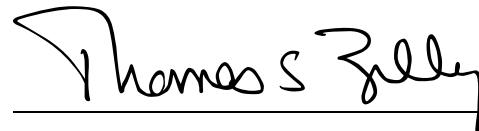
22 /s/ Attorneys for Plaintiff International Business Machines Corp.

24 DATED: August 6, 2020

25 /s/ Attorneys for Defendants Zillow Group, Inc. and Zillow, Inc.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
2
3 DATED this 28th day of August, 2020.

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Thomas S. Zilly
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
[print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *International Business Machines Corp. v. Zillow Group, Inc.*, Case Nos. 2:20-cv-00851-
and 2:20-cv-01130-TSZ. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
subject me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my Washington agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: _____